

Hon Grant Robertson

MP for Wellington Central

Minister of Finance

Minister for Sport and Recreation

Associate Minister for Arts, Culture and Heritage



23 APR 2019

Jason Walls
jason.walls@nzme.co.nz

Dear Jason Walls

Thank you for your Official Information Act request, received on 27 March 2019. You requested:

"I would like to request the following under the OIA:

This report – Treasury Report T2019/154: Response to Concerns Over ACC Conduct, provided to the Minister on January 28, 2019.

If that document is already publically available please point me to its location asap – not after the 20 working days required to respond to this OIA."

Information Being Released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	28 January 2019	T2019/154: Treasury Report: Response to Concerns Raised Over ACC Conduct	Release in part

I have decided to release the document listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons,
- section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Grant Robertson', with a stylized, cursive script.

Hon Grant Robertson
Minister of Finance

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IN-CONFIDENCE



Treasury Report: Response to Concerns Raised Over ACC Conduct

Date:	28 January 2019	Report No:	T2019/154
		File Number:	CM-1-3-1-9-3-3

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	Sign and send the attached letter	8 February 2019

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Oliver Martin	Senior Analyst – Financial Institutions	s9(2)(k)	N/A (mob) ✓
Joseph Sant	Manager – Financial Institutions		N/A (mob)

Actions for the Minister's Office Staff (if required)

Return the signed report to Treasury.

Send the attached letter.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

IN-CONFIDENCE**Treasury Report: Response to Concerns Raised Over ACC Conduct**

Purpose of Report

1. The Minister for ACC has received a letter from NorthWest Healthcare Properties (NWH) expressing some concerns over the conduct of ACC in respect of its investment in Vital Healthcare Property Trust (Vital). The Minister for ACC has asked for this to be transferred to you as it aligns with your responsibilities as Minister of Finance.

Background

2. NWH is a Canadian property investment trust listed on the Toronto Stock Exchange. Vital is a managed investment scheme which is listed on the NZX. Vital is managed by a subsidiary of NWH, which also owns 25 percent of its units.
3. NWH considers that ACC is using 'aggressive tactics to attempt to create leverage' over NWH with a view to lowering management fees and the extent of control that NWH has over board composition. NWH believes ACC is increasingly positioning itself as an activist investor, culminating in ACC putting forward five resolutions at Vital's 2018 Annual General Meeting.
4. ACC contends that these resolutions were put forward in an attempt to get NWH to change a number of its clauses in its Trust Deed that ACC believes are inconsistent with good governance practice (such as the ability of NWH to unilaterally remove independent directors). ACC also sought to bring the fees it charges, and the basis on which these are calculated, in line with what it considers to be current market practice.
5. ACC states that it received 'substantial support' for the resolutions it put forward and that all of the resolutions won majority support from unitholders, if Northwest's own shares are excluded from the result.
6. Annex 1 provides more detail as to NWH's concerns and ACC's response to these.

Treasury View

7. The Treasury considers that this is ultimately an operational matter between ACC and NWH and has reflected this in a draft letter of response.

Recommended Action

We recommend that you **sign and send** the attached letter to NorthWest Healthcare Properties.

Joseph Sant
Manager, Financial Institutions

Hon Grant Robertson
Minister of Finance

s9(2)(a)
NorthWest Value Partners
s9(2)(a)

Dear s9(2)(a)

Thank you for your email of 1 December 2018 to Hon Lees-Galloway regarding your concerns over the conduct of ACC. This correspondence was passed on to me for response as it aligns with my responsibilities as Minister of Finance.

While I note your concerns, this is an operational matter for which ACC's Board and executive have responsibility. As Minister of Finance I do not intervene in operational matters. I encourage you to work with ACC to resolve any issues you may have and ensure your joint investments are appropriately governed.

Thank you again for taking the time to write.

Yours sincerely

Hon Grant Robertson
Minister of Finance

Annex 1.ACC's Response to Specific Allegations from Northwest

In its letter NWH has summarised its concerns with ACC's conduct. ACC has provided the Treasury with responses to each of these, as italicised below.

1. Unauthorised and unlawful activity.

- ACC's conduct goes beyond the type of activity necessary to perform its statutory function.

We're not clear what exact aspect of our conduct they are referring to but the importance of a Governance role in active investment management is well established. ACC is expected to invest as if it were a trustee, and we believe that this includes an obligation to work to try to achieve the best possible governance outcomes for our investments. The ACC's move to propose the resolutions has received validation through the support from both Institutional Shareholder Services Inc. (a highly regarded governance advisory consultancy) and the Shareholder Association.

- It is not appropriate for a public entity to be exercising its influence to modify a governance model that is already heavily regulated.

We disagree with the proposition that the fact that ACC is a public entity should make it care less about how its investments are governed. We also disagree with the proposition that NZ Unit Trusts such as Vital Healthcare Trust been heavily regulated, as evidenced by a lack of any regulatory interventions in recent years regarding the governance of Unit Trusts, and also evidence by the fact that their "not a company" status exempts them from the Takeovers Code and many aspects of the NZX Listing Rules. In other jurisdictions (e.g. the UK) Unit Trusts are required to have a board that is independent of the manager, and which is responsible for regularly reviewing whether to retain the manager.

- This is not a legitimate use of ACC's power to invest its surplus funds.

Our response to this is the same as our response to the first bullet point above – we are required to invest as if we were a trustee, and this includes working to ensure that our investments are not adversely affected by poor governance.

2. Unfair and inequitable treatment.

- Under the CPTPP, NZ is required to ensure fair and equitable treatment and full protection and security to covered investments.

Trade agreements are not our area of expertise but we would be very surprised if the CPTPP has any bearing here. We would take exactly the same actions if Northwest Healthcare Properties was an NZ company acting in a similar manner, so don't believe that our actions can be considered as being unfair towards Canadians.

- It is unfair and inequitable for ACC to agitate for changes that undermine the basis of overseas investment in NZ.

We do not believe the changes we propose will undermine the basis of investment in NZ. In fact we believe improved governance structures will only benefit overseas investment.

- NWH is concerned ACC's tactics compromise the fair and equitable treatment required towards NWH by virtue of its Canadian ownership.

Our governance approach is indifferent to the nationality of Northwest's ownership.

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